

PHASED RETIREMENT

2016 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill modifies the Utah State Retirement and Insurance Benefit Act by enacting phased retirement provisions.

Highlighted Provisions:

This bill:

- defines terms;
- allows a participating employer to participate in phased retirement for a retiree who has not completed the one-year employment separation requirement;
- requires a participating employer who offers phased retirement to establish written policies and enter into a written agreement with the retiree;
- provides for retiree eligibility for phased retirement and establishes restrictions;
- provides for participating employer and retiree reporting;
- provides penalties;
- allows the Legislature to make changes to the program;
- allows the Utah State Retirement Board to make related rules;
- provides for a sunset of the phased retirement provisions; and
- makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

49-11-505, as last amended by Laws of Utah 2015, Chapters 243 and 256

ENACTS:

49-11-1201, Utah Code Annotated 1953

49-11-1202, Utah Code Annotated 1953

33 **49-11-1203**, Utah Code Annotated 1953
34 **49-11-1204**, Utah Code Annotated 1953
35 **49-11-1205**, Utah Code Annotated 1953
36 **49-11-1206**, Utah Code Annotated 1953
37 **49-11-1207**, Utah Code Annotated 1953
38 **49-11-1208**, Utah Code Annotated 1953
39 **63I-1-249**, Utah Code Annotated 1953

40

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section **49-11-505** is amended to read:

43 **49-11-505. Reemployment of a retiree -- Restrictions.**

44 (1) (a) For purposes of this section, "retiree":

45 (i) means a person who:

46 (A) retired from a participating employer; and

47 (B) begins reemployment on or after July 1, 2010, with a participating employer;

48 (ii) does not include a person:

49 (A) who was reemployed by a participating employer before July 1, 2010; and

50 (B) whose participating employer that reemployed the person under Subsection

51 (1)(a)(ii)(A) was dissolved, consolidated, merged, or structurally changed in accordance with

52 Section 49-11-621 after July 1, 2010; ~~and~~

53 (iii) does not include a person who is reemployed as an active senior judge or an active

54 senior justice court judge as described by Utah State Court Rules, appointed to hear cases by

55 the Utah Supreme Court in accordance with Article VIII, Section 4, Utah Constitution[:]; and

56 (iv) does not include a person who is working under a phased retirement agreement in

57 accordance with Section 49-11-1201.

58 (b) (i) This section does not apply to employment as an elected official if the elected

59 official's position is not full time as certified by the participating employer.

60 (ii) The provisions of this section apply to an elected official whose elected position is

61 full time as certified by the participating employer.

62 (c) (i) This section does not apply to employment as a part-time appointed board

63 member who does not receive any remuneration, stipend, or other benefit for the part-time

64 appointed board member's service.

65 (ii) For purposes of this Subsection (1)(c), remuneration, stipend, or other benefit does
66 not include receipt of per diem and travel expenses up to the amounts established by the
67 Division of Finance in:

68 (A) Section 63A-3-106;

69 (B) Section 63A-3-107; and

70 (C) rules made by the Division of Finance according to Sections 63A-3-106 and
71 63A-3-107.

72 (d) (i) For purposes of this Subsection (1)(d), "affiliated emergency services worker"
73 means a person who is employed by a participating employer and who performs emergency
74 services for another participating employer that is a different agency in which the person:

75 (A) has been trained in techniques and skills required for the service the person
76 provides to the participating employer;

77 (B) continues to receive regular training required for the service;

78 (C) is on the rolls as a trained affiliated emergency services worker of the participating
79 employer; and

80 (D) provides ongoing service for a participating employer, which service may include
81 service as a volunteer firefighter, reserve law enforcement officer, search and rescue personnel,
82 emergency medical technician, ambulance personnel, park ranger, or public utilities worker.

83 (ii) A person who performs work or service but does not meet the requirements of
84 Subsection (1)(d)(i) is not an affiliated emergency services worker for purposes of this
85 Subsection (1)(d).

86 (iii) The office may not cancel the retirement allowance of a retiree who is employed as
87 an affiliated emergency services worker within one year of the retiree's retirement date if the
88 affiliated emergency services worker does not receive any compensation, except for:

89 (A) a nominal fee, stipend, discount, tax credit, voucher, or other fixed sum of money
90 or cash equivalent payment not tied to productivity and paid periodically for services;

91 (B) a length-of-service award;

92 (C) insurance policy premiums paid by the participating employer in the event of death
93 of an affiliated emergency services worker or a line-of-duty accidental death or disability; or

94 (D) reimbursement of expenses incurred in the performance of duties.

(iv) For purposes of Subsections (1)(d)(iii)(A) and (B), the total amount of any discounts, tax credits, vouchers, and payments to a volunteer may not exceed \$500 per month.

(v) Beginning January 1, 2016, the board shall adjust the amount under Subsection (1)(d)(iv) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(vi) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if employment as an affiliated emergency services worker with a participating employer exceeds the limitation under Subsection (1)(d)(iv).

(vii) If a retiree is employed as an affiliated emergency services worker under the provisions of Subsection (1)(d), the termination date of the employment as an affiliated emergency services worker, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection (3)(a).

(2) A retiree may not for the same period of reemployment:

(a) (i) earn additional service credit; or

(ii) receive any retirement related contribution from a participating employer; and

(b) receive a retirement allowance.

(3) (a) Except as provided under Subsection (3)(b) or (10), the office shall cancel the retirement allowance of a retiree if the reemployment with a participating employer begins within one year of the retiree's retirement date.

(b) The office may not cancel the retirement allowance of a retiree who is reemployed with a participating employer within one year of the retiree's retirement date if:

(i) the retiree is not reemployed by a participating employer for a period of at least 60 days from the retiree's retirement date;

(ii) upon reemployment after the break in service under Subsection (3)(b)(i), the retiree does not receive any employer provided benefits, including:

(A) medical benefits;

(B) dental benefits;

(C) other insurance benefits except for workers' compensation as provided under Title 34A, Chapter 2, Workers' Compensation Act, and withholdings required by federal or state law

for Social Security, Medicare, and unemployment insurance; or

(D) paid time off, including sick, annual, or other type of leave; and

(iii) (A) the retiree does not earn in any calendar year of reemployment an amount in excess of the lesser of \$15,000 or one-half of the retiree's final average salary upon which the retiree's retirement allowance is based; or

(B) the retiree is reemployed as a judge as defined under Section 78A-11-102.

(c) Beginning January 1, 2013, the board shall adjust the amounts under Subsection (3)(b)(iii)(A) by the annual change in the Consumer Price Index during the previous calendar year as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.

(d) The office shall cancel the retirement allowance of a retiree for the remainder of the calendar year if the reemployment with a participating employer exceeds the limitation under Subsection (3)(b)(iii)(A).

(e) If a retiree is reemployed under the provisions of Subsection (3)(b), the termination date of the reemployment, as confirmed in writing by the participating employer, is considered the retiree's retirement date for the purpose of calculating the separation requirement under Subsection (3)(a).

(f) If a retiree received a retirement allowance in error, due to reemployment in violation of this section:

(i) the office shall cancel the retiree's retirement allowance; and

(ii) if the retiree applies for a future benefit, the office shall recover any overpayment in accordance with the provisions of Section 49-11-607.

(4) If a reemployed retiree has completed the one-year separation from employment with a participating employer required under Subsection (3)(a), the retiree may elect to:

(a) earn additional service credit in accordance with this title and cancel the retiree's retirement allowance; or

(b) continue to receive the retiree's retirement allowance and forfeit any retirement related contribution from the participating employer who reemployed the retiree.

(5) (a) As used in this Subsection (5), "amortization rate" means the amortization rate, as defined in Section 49-11-102, to be applied to the system that would have covered the retiree if the retiree's reemployed position were deemed to be an eligible, full-time position within that

157 system.

158 (b) A participating employer who reemploys a retiree shall contribute to the office the
159 amortization rate if the reemployed retiree:

160 (i) has completed the one-year separation from employment with a participating
161 employer required under Subsection (3)(a); and

162 (ii) makes an election under Subsection (4)(b) to continue to receive a retirement
163 allowance while reemployed.

164 (6) (a) A participating employer shall immediately notify the office:

165 (i) if the participating employer reemploys a retiree;

166 (ii) whether the reemployment is subject to Subsection (3)(b) or (4) of this section; and

167 (iii) of any election by the retiree under Subsection (4).

168 (b) A participating employer shall certify to the office whether the position of an
169 elected official is or is not full time.

170 (c) A participating employer is liable to the office for a payment or failure to make a
171 payment in violation of this section.

172 (d) If a participating employer fails to notify the office in accordance with this section,
173 the participating employer is immediately subject to a compliance audit by the office.

174 (7) (a) The office shall immediately cancel the retirement allowance of a retiree in
175 accordance with Subsection (7)(b) if the office receives notice or learns of:

176 (i) the reemployment of a retiree in violation of Subsection (3); or

177 (ii) the election of a reemployed retiree under Subsection (4)(a).

178 (b) If the retiree is eligible for retirement coverage in the reemployed position, the
179 office shall cancel the allowance of a retiree subject to Subsection (7)(a), and reinstate the
180 retiree to active member status on the first day of the month following the date of:

181 (i) reemployment if the retiree is subject to Subsection (3); or

182 (ii) an election by an employee under Subsection (4)(a).

183 (c) If the retiree is not otherwise eligible for retirement coverage in the reemployed
184 position:

185 (i) the office shall cancel the allowance of a retiree subject to Subsection (7)(a)(i); and

186 (ii) the participating employer shall pay the amortization rate to the office on behalf of
187 the retiree.

188 (8) (a) A retiree subject to Subsection (7)(b) who retires within two years from the date
189 of reemployment:

190 (i) is not entitled to a recalculated retirement benefit; and

191 (ii) will resume the allowance that was being paid at the time of cancellation.

192 (b) Subject to Subsection (2), a retiree who is reinstated to active membership under
193 Subsection (7) and who retires two or more years after the date of reinstatement to active
194 membership shall:

195 (i) resume receiving the allowance that was being paid at the time of cancellation; and

196 (ii) receive an additional allowance based on the formula in effect at the date of the
197 subsequent retirement for all service credit accrued between the first and subsequent retirement
198 dates.

199 (9) (a) A retiree subject to this section shall report to the office the status of the
200 reemployment under Subsection (3) or (4).

201 (b) If the retiree fails to inform the office of an election under Subsection (4), the office
202 shall withhold one month's benefit for each month the retiree fails to inform the office under
203 Subsection (9)(a).

204 (10) A retiree shall be considered as having completed the one-year separation from
205 employment with a participating employer required under Subsection (3)(a), if the retiree:

206 (a) before retiring:

207 (i) was employed with a participating employer as a public safety service employee as
208 defined in Section 49-14-102, 49-15-102, or 49-23-102;

209 (ii) and during the employment under Subsection (10)(a)(i), suffered a physical injury
210 resulting from external force or violence while performing the duties of the employment, and
211 for which injury the retiree would have been approved for total disability in accordance with
212 the provisions under Title 49, Chapter 21, Public Employees' Long-Term Disability Act, if
213 years of service are not considered;

214 (iii) had less than 30 years of service credit but had sufficient service credit to retire,
215 with an unreduced allowance making the public safety service employee ineligible for
216 long-term disability payments under Title 49, Chapter 21, Public Employees' Long-Term
217 Disability Act, or a substantially similar long-term disability program; and

218 (iv) does not receive any long-term disability benefits from any participating employer;

219 and

220 (b) is reemployed by a different participating employer.

221 (11) The board may make rules to implement this section.

222 Section 2. Section **49-11-1201** is enacted to read:

223 **Part 12. Phased Retirement**

224 **49-11-1201. Definitions.**

225 As used in this part:

226 (1) "Amortization rate" means the amortization rate, as defined in Section 49-11-102,
227 to be applied to the system that would have covered the retiree if the retiree's part-time position
228 were deemed to be an eligible, full-time position within that system.

229 (2) "Full-time" means a:

230 (a) regular full-time employee whose term of employment for a participating employer
231 contemplates continued employment during a fiscal or calendar year and whose employment
232 normally requires an average of 40 hours or more per week and who receives benefits normally
233 provided by the participating employer;

234 (b) teacher whose term of employment for a participating employer contemplates
235 continued employment during a school year and who teaches full-time;

236 (c) firefighter service employee whose employment normally requires an average of
237 2,080 hours of regularly scheduled firefighter service per year; and

238 (d) public safety service employee whose employment normally requires an average of
239 2,080 hours of regularly scheduled public safety service per year.

240 (3) "Half-time" means a:

241 (a) regular full-time employee whose term of employment for a participating employer
242 contemplates continued employment during a fiscal or calendar year and whose employment
243 normally requires an average of 20 hours per week and who receives benefits normally
244 provided by the participating employer;

245 (b) teacher whose term of employment for a participating employer contemplates
246 continued employment during a school year and who teaches half-time;

247 (c) firefighter service employee whose employment normally requires an average of
248 1,040 hours of regularly scheduled firefighter service per year; and

249 (d) public safety service employee whose employment normally requires an average of

250 1,040 hours of regularly scheduled public safety service per year.

251 (4) "Phased retirement" means continuing employment on a half-time basis of a retiree
252 with the same participating employer after the retiree's retirement date while the retiree receives
253 a reduced retirement allowance.

254 Section 3. Section **49-12-1202** is enacted to read:

255 **49-11-1202. Phased Retirement -- Voluntary participation -- Employer duties.**

256 A participating employer may elect to participate in phased retirement for a retiree who
257 has not completed the one-year employment separation requirement under Section 49-11-505
258 under the conditions established under this part, if the participating employer:

259 (1) establishes written policies and procedures for phased retirement that shall include
260 provisions for:

261 (a) granting and denying a request for phased retirement;

262 (b) needed approvals within the participating employer;

263 (c) time limits or other restrictions;

264 (d) identifying positions that may be included or excluded; and

265 (e) the elements of a written agreement described under Section 49-11-1204; and

266 (2) enters into an agreement described under Section 49-11-1204;

267 (3) submits an application to the office for phased retirement on behalf of the parties of
268 the agreement described under Section 49-11-1204; and

269 (4) complies with this part.

270 Section 4. Section **49-12-1203** is enacted to read:

271 **49-11-1203. Phased Retirement -- Eligibility -- Restrictions -- Amortization Rate.**

272 (1) A retiree is eligible for employment with only one position for only one
273 participating employer under phased retirement following the retiree's retirement date if:

274 (a) the retiree:

275 (i) is eligible to retire and retires in accordance with this title;

276 (ii) has been employed full-time, for not less than four years immediately before the
277 retiree's retirement date;

278 (iii) completes and submits all required retirement forms to the office; and

279 (iv) completes and submits any phased retirement forms required by rules established
280 under Section 49-11-1207; and

(b) the retiree and the participating employer enter into an agreement described under Section 49-11-1204.

(2) For the period of the phased retirement:

(a) the retiree receives 50% of the retiree's monthly allowance;

(b) the participating employer employs the retiree on a half-time basis;

(c) a participating employer that employs the retiree shall contribute to the office the amortization rate;

(d) the retiree may not receive an annual cost-of-living adjustment to the retiree's allowance;

(e) any death benefits payable to a surviving spouse or other beneficiary shall be paid based on 100% of the retiree's retirement allowance;

(f) the retiree may not receive any employer provided retirement benefits, service credit accruals, or any retirement related contributions from the participating employer; and

(g) except as specified under this section, a retiree working under phased retirement shall be treated in the same manner as any other part-time employee working a similar position and number of hours with the participating employer, including:

(i) any non-retirement related benefits;

(ii) leave benefits;

(iii) medical benefits; and

(iv) other benefits.

Section 5. Section **49-12-1204** is enacted to read:

49-11-1204. Phased retirement agreements.

(1) The participating employer and a willing and eligible retiree shall enter into a written agreement to participate in phased retirement.

(2) The agreement shall specify the period of the phased retirement and, at the discretion of the agreeing parties, address:

(a) hours of work;

(b) job duties; and

(c) other arrangements related to the employment.

Section 6. Section **49-12-1205** is enacted to read:

49-11-1205. Reporting -- Penalties.

312 (1) (a) A participating employer shall, within five business days, notify the office if the
313 participating employer enters a phased retirement agreement with a retiree.

314 (b) A participating employer shall report to the office any change in status of the
315 phased retirement in accordance with rules established under Section 49-11-1207.

316 (c) If a participating employer fails to notify the office in accordance with this section,
317 the participating employer is immediately subject to a compliance audit by the office.

318 (2) (a) A retiree who has entered into an phased retirement agreement under this
319 section shall report to the office the phased retirement agreement in accordance with rules
320 established under Section 49-11-1207.

321 (b) If the retiree fails to report to the office as required under this section, the office
322 shall withhold one month's allowance for each month the retiree fails to make the report, in a
323 timely manner, required under Subsection (2)(a).

324 (3) If a retiree receives a retirement allowance or portion of a retirement allowance in
325 error or in violation of this part:

326 (a) the office shall cancel the retiree's retirement allowance; and

327 (b) the office shall recover any overpayment in accordance with Section 49-11-607.

328 (4) If a retiree or participating employer violates this part, including a failure to report
329 in accordance with this section, the retiree, participating employer, or both who are found to be
330 responsible for the violation are liable to the office for the amount of any allowance
331 overpayment, failure to make a required payment or contribution, or other amount needed to
332 correct an error or incorrect benefit resulting from the violation.

333 Section 7. Section **49-12-1206** is enacted to read:

334 **49-11-1206. Reset of one year separation.**

335 If a retiree is employed under phased retirement under this section, the termination date
336 of the phased retirement employment, as confirmed in writing by the participating employer, is
337 considered the retiree's retirement date for the purpose of calculating the separation
338 requirement under Subsection 49-11-505 (3)(a).

339 Section 8. Section **49-11-1207** is enacted to read:

340 **49-11-1207. Phased Retirement -- Adjustments or termination.**

341 (1) The Legislature may make adjustments to or terminate the phased retirement option
342 created under this part, including:

343 (a) amending phased retirement eligibility, restrictions, scope, or duration provisions;
344 (b) closing phased retirement to additional retirees; or
345 (c) terminating phased retirement for all participating retirees.
346 (2) A participating employer and retiree enter into a phased retirement agreement
347 subject to the adjustments or termination reserved in this section.

348 Section 9. Section **49-12-1208** is enacted to read:

349 **49-11-1208. Rulemaking.**

350 The board may make rules to implement this part.

351 Section 10. Section **63I-1-249** is enacted to read:

352 **63I-1-249. Repeal dates, Title 49.**

353 Title 49, Chapter 1, Part 12, is repealed July 1, 2021.

354 Section 11. **Effective date.**

355 This bill takes effect on July 1, 2016.